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ABSTRACT

Created by act of the California Legislature in September of 1976, the Native American Heritage Commission seeks to identify and protect places of cultural significance to California Native Americans and to safeguard Indian religious rights. The Commission, which is composed entirely of Native Americans, provides community services to solve the heritage problems of the California Indian community. These have included public hearings to resolve confrontations, conferences for Indians on the extent of existing heritage laws, investigations of complaints, and assistance in obtaining access to ceremonial and sacred sites on public and private lands. Legislative efforts have included drafting and sponsoring heritage legislation on behalf of the statewide Indian community. Despite recent gains in the protection accorded Indian heritage and religious freedom, the Commission has determined that a number of inadequacies remain in existing state and federal laws for the reasonable protection of Indian heritage rights. There are administrative and procedural omissions in the protection of Indian heritage by agencies of the executive branch of the state government and by federal law and policy. The Commission recommends that the Legislature broaden the statutory protection of sacred places specifically and Indian heritage generally and grant the state executive branch the authority to undertake the correction of deficiencies and problems identified in this report. (Author/DS)

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ED178227

# Report to the Legislature

by the

# NATIVE AMERICAN HERITAGE COMMISSION

on

# PROTECTION OF NATIVE AMERICAN SACRED PLACES IN CALIFORNIA

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## EXECUTIVE SUMMARY

The Commission has taken its statutory obligation (Statutes of 1976, Chapter 1332, Section 2) to report on the current administrative and statutory protection accorded Native American sacred places in California as an opportunity to report its findings on a number of matters related to Indian heritage and religious freedom.

Despite recent gains in the protection accorded California Indian heritage and religious freedom, the Commission has determined that existing state and federal law remains inadequate for the reasonable protection of Indian heritage rights. The Commission has also found administrative and procedural omissions in the protection of Indian heritage by agencies of the executive branch of state government and by federal law and policy.

The Commission recommends that the Legislature broaden the statutory protection of sacred places specifically and Indian heritage generally. The Commission further recommends that the Legislature empower the executive branch of state government with the resources and authority to undertake the correction of deficiencies and problems identified in this report.

# I. THE COMMISSION: ITS HISTORY AND RESPONSIBILITIES

## Introduction

The cultural and human remains of the indigenous inhabitants of California occur throughout the state. Contemporary California Indians believe that it is sacreligious to disturb or remove Indian burial remains from prehistoric cemeteries, which are very often found near or within ancient village sites. California Indians also feel that collection or removal of the prehistoric cultural remains of their ancestors by non-Indians can constitute a violation of their cultural legacy. They particularly resent the destruction that often accompanies the archaeological study of prehistoric villages and ancient burial and sacred places. This disturbance is upsetting when it is done in a disrespectful, irreligious manner, without their approval. Such destruction usually results in the permanent loss of sacred and culturally significant objects to non-Indian museums and related institutions.

Equally important to California Indians are those places of traditional spiritual or social importance (such as prayer sites, ceremonial sites, and shrines), areas important in folklore and legend, or areas attributed with special or unique powers or sacredness. To ensure that Native American culture is not lost, it is essential for Indians to have continued access to traditional sacred places, many of which are located on lands now owned by non-Indians or are under the control of various public authorities. Similarly, it is essential to the survival and renaissance of California Indian culture that there be access to the native plants and animals used in traditional gathering, hunting, or curing practices and those relatively few physical features, natural resources, and settings (such as hot springs, obsidian outcrops, free-flowing rivers and streams, lakes, and natural landscapes) where traditional and sacred activities take place.

## Toward an Effective California Indian Heritage Program

While the State had discussed the problem at length prior to the creation of the Native American Heritage Commission, it had done relatively little to protect the places, objects, and remains of cultural and religious significance to Native Americans. Up to 1963, California Indians possessed virtually no heritage rights outside the boundaries of the small reservation and rancheria enclaves allotted to them by the federal government as rural ghettos. By 1963, however, the Legislature had observed that the nature and importance of the culture of the original inhabitants of the state are not sufficiently understood by present-day Californians and that this cultural record is not adequately chronicled for present and future generations of Americans (Senate Concurrent Resolution No. 43, Resolution Chapter 87, Statutes of 1963, pp. 4839-40). The Legislature additionally stressed that evidence of this important civilization "can never be reproduced or replaced." Unfortunately, the Legislature did nothing more at this time than request the cooperation of agencies, individuals, and organizations in reporting all archaeological discoveries of Indian culture to the Department of Parks and Recreation.

Likewise, while the Legislature in 1963 acknowledged the right of California Indians to engage in a variety of important traditional gathering activities for subsistence, ceremony, and handicrafts, they restricted the ability to engage in such activities legally (Section 199, Government Code) to only a small portion of the California Indian population and to only state public domain contiguous to specified portions of the Klamath and Trinity rivers (Chapter 1498, Statutes of 1963, p. 3076).

In 1971, the Legislature passed AB 1788 enacting a "California Archaeological Survey." The bill authorized the creation of a new state survey office with the power to "take all necessary action to preserve, protect, appreciate, and use the archaeological resources of the natural and cultural environment in the public and scientific interest." The new survey was to be guided by a commission, of which at least three of the seven members were to be of California native extraction or "be thoroughly versed in current California native affairs." From the perspective of the Indian community this legislation presented problems because of the primacy it placed on the interests of science in general and archaeologists in particular over the inherent rights of the Indian people with respect to the cultural remains of their ancestors. The measure also seemed to imply that non-Indians "thoroughly versed in current California native affairs" would continue as the unwanted, benevolent custodians of Indian heritage. Governor Ronald Reagan vetoed the legislation.

Also in 1971, the Legislature temporarily established a special task force which had three California Native Americans among its members to study the State's record of preserving and salvaging archaeological, paleontological, and historical resources (Chapter 827, Statutes of 1971, pp. 1529-30). The Legislature also placed a moratorium on the disturbance of Native California Indian burial sites abandoned for less than 200 years until such time as the Legislature could act upon the task force report transmitted to them through the Resources Agency.

Seven of the original seventeen members of the task force prepared a report released September 1, 1973. It strongly urged the establishment of a new state agency to "coordinate and streamline" the State's cultural heritage programs. In spite of the Legislature's specific charge, however, the task force did not consult extensively with the California Indian community. Consequently, the report contained only a philosophical, though strong, statement setting forth California Native American dissatisfaction with the continued looting and destruction of their cemeteries:

> Indian people have an urgent interest in the protection of a special aspect of California's heritage that other Californians may not be able to fully appreciate: the burial grounds of Indian ancestors and Indian heritage. When California was taken from the Indian people and they were removed to reservations, frequently through the use of violence, no provisions were made for protecting their villages from destruction or their burial grounds from desecration by the new owners. The Indian viewpoint with regard to preservation of California's heritage is fundamentally different from that of

California's non-Indian citizens, many of the latter are more concerned about what can be learned from digging up California's past than about simply protecting that past from disturbance and desecration. Indian concern for a Heritage Agency is therefore motivated out of desperation; a need to do something to provide protection for the remains of their ancestors which are being desecrated at an alarming rate by modern developments throughout California.

Indian people observe that non-Indian cemeteries are accorded the strictest legal protection, sometimes at public expense, while Indian cemeteries are destroyed by bulldozers, an activity which on many occasions is also financed at public expense. Indians view a Heritage Agency as an important step in stopping desecration of the Indian heritage and to obtain from the people of California the recognition of the Indian people's need to protect their heritage.

The task force also produced a detailed legislative proposal in the form of model legislation for the creation of a "California Heritage Department." The heritage rights of the Indian community would still have been subordinated to the non-Indian interests of science and research. Fortunately for the Indian community, the Resources Secretary did not, however, fully endorse the task force report and proposal. Instead, the Secretary criticized the imbalanced emphasis of the report and disagreed with the need to establish immediately a single heritage agency.

In 1974, moreover, the Legislature directed the Legislative Analyst to study the feasibility of consolidating and organizing various existing state agencies with jurisdiction over archaeological, paleontological, and historical matters into a single agency (Resolution Chapter No. 233, Statutes of 1974). The Legislative Analyst's report criticized the task force's 1973 heritage department proposal for lacking any clearly defined responsibilities appropriate to a state organization at the departmental level. The Analyst observed that a number of the proposed department's tasks tended to duplicate the activities of the Department of Parks and Recreation.

### The Creation of the Native American Heritage Commission

By 1975, it was clear that solution to the heritage problems of California Indians would never be found in non-Indian proposals for the creation of yet another non-Indian institution which, in spite of its title of heritage agency, would actually continue to deprive Indians of their heritage rights. Accordingly, in November 1975, Indians met at D-Q University in Davis to discuss legislation needed to protect Indian cemeteries, sacred places, religious rights, and related heritage concerns. Out of the conference emerged a legislative proposal satisfactory to the Indian community. This proposal to create the Native American Heritage Commission (NAHC) became AB 4239 sponsored by Assemblyman Knox in the 1975-76 Legislature.

The bill moved through the Legislature with the assistance of Governor Brown and was signed into law on September 29, 1976. With this law, the fundamental religious and heritage rights of the California Indian were recognized and an all-Indian heritage body was established to safeguard those rights. Public agencies and private parties using state public property were prohibited after July 1, 1977, from interfering with the free exercise of Native American religion and from causing severe and irreparable damage to designated types of sacred sites. The Legislature demonstrated its commitment to safeguard Indian heritage rights with a modest, initial appropriation of $33,000 for the Commission and in granting the Commission the authority to appoint necessary clerical staff. Further, the Commission has enjoyed the continuing support of the Governor.

## II. THE COMMISSION AND ITS RESPONSIBILITIES

The legislation creating the Commission made it responsible for identifying and protecting places of cultural significance to California Native Americans and for safeguarding Indian religious rights. More specifically, the Commission was authorized to identify and catalogue places of special religious or social significance to Native Americans in California (Chapter 1332, Statutes of 1976; Pub. Res. Code, Section 5097.9, Division 5, Chapter 1.75). It can recommend to the Legislature procedures to encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native Americans for ceremonial or spiritual activities. The Commission also assists Native Americans in obtaining appropriate access to sacred places on public lands and may make recommendations to the Legislature on the public acquisition of sacred places to ensure continuing access.

The Commission further aids state agencies in any negotiations with federal agencies for the protection of Native American sacred places on federally administered land in California. The Commission is authorized to bring legal action to prevent damage to and to assure Native American access to sanctified cemeteries, places of worship, religious or ceremonial sites, and sacred shrines located on public property administered by the State. Finally, the enabling legislation requires the Commission to review administrative and statutory protection currently accorded Native American sacred places on public land and report its findings and recommendations to the Legislature no later than January 1, 1979.

The Commission consists of nine California Native Americans--five of whom are elders and spiritual leaders--appointed by the Governor with the advice and consent of the Senate. The Commission's Office of the Executive Secretary is an autonomous unit attached to the Governor's Office of Planning and Research. Stephen M. Rios was appointed Executive Secretary on June 15, 1977, and the Commission was formally constituted on June 21, 1977, in a ceremony held at the Capitol. The Commissioners and other staff are:

Milton M. Marks, Chairman (McKinleyville)
Abby Abinanti (Eureka)
Ed Castillo (Riverside)
Patricia Duro (Valley Center)
Jay Johnson (Yosemite)
Mabel McKay (Santa Rosa)
Jane Penn (Banning)
Blanche Shippentower (Bishop)
Talbert Wilson (Cassel)

Victoria L. Roberts, Resources Coordinator
Joyce Stroup, Support Staff
Linda Patton-Finch, Support Staff

Other staff services have been obtained for the Commission under contract or through the use of intermittent employees and interns.

The Executive Secretary's office implements policies and decisions made by the Commission in carrying out its legislative mandate. These tasks include exercising the responsibilities of the Commission on a day-to-day basis, responding to community requests for assistance, developing and coordinating heritage-related legislation, and promoting intergovernmental relations on heritage matters. In addition, the Governor has delegated additional duties to the Executive Secretary from time to time.

## III. THE ACCOMPLISHMENTS OF THE COMMISSION

The Native American Heritage Commission provides community services to solve the heritage problems of the California Indian community. For example, in order to aid in resolving a confrontation between developers and Indians at Point Conception, the Commission conducted a public hearing at Santa Barbara. At this meeting, individuals and members of the local Indian community testified on the potential heritage impacts of the proposed Point Conception Liquefied Natural Gas facility. These findings have not only helped document the importance of Point Conception to Indian heritage, they have guided subsequent decision-making.

To help the California Indian community more fully understand various heritage issues throughout the state and to learn more about heritage safeguards and religious rights, the Commission sponsored a special Sacred Lands Conference in September 1978. This conference was held in the Chaw-Se Ceremonial Roundhouse at Indian Grinding Rock State Historical Park near Jackson. More than 200 members of the California Indian community and their non-Indian guests attended. The conference was more than an exercise in consciousness-raising. It gave the Indian community a greater appreciation of existing heritage laws and helped clarify additional statutory needs. The success of the conference was such that the Commission plans to make it an annual event.

In fulfilling its mandate to safeguard Indian cemeteries, places of worship, religious or ceremonial sites, sacred shrines, and other places of significance to California Indians on public land, the Commission and staff have investigated complaints on projects or policies from throughout California. Investigations have involved on-site inspections, document review, research, meetings, and extensive telephone inquiries. The NAHC's effectiveness as a mediator can be measured by the fact that it has achieved many negotiated settlements, mitigation schemes, and project or policy changes. These efforts have done more than solve immediate problems. They have also promoted greater understanding of Indian ways, encouraged responsible land management, and saved hundreds of thousands of dollars in litigation and project delays.

The Commissioners and the Executive Secretary's office have also been active in assisting local Native Americans obtain access to ceremonial and sacred sites on private land, continue traditional gathering practices, protect burial sites located on privately owned property and land under the jurisdiction of local government, and deal successfully with government officials and regulations. Records show that the Executive Secretary's office alone has received an estimated 865 requests for assistance over an eighteen-month period, for an average of 48 requests monthly. Many other such requests are received and directly acted upon by the individual Commissioners who serve without compensation, and are reimbursed for only their actual and necessary expenses. It is significant to note that their work is accomplished without secretarial assistance. Records additionally reveal that the work of the Commission has entailed approximately 19,000 miles of staff travel and approximately 31,000 miles

**Native American Heritage Commission**
**Activities, 1977 and 1978**

Indian community meetings attended by NAHC or staff.

1977: 99
1978: 152

Agency meetings attended by NAHC or staff.

1977: 110
1978: 224

Total number of meetings NAHC or staff attended.

1977: 209
1978: 376

Meetings held with both agencies and Indian community involvement.

1977: 20
1978: 38

Days spent attending statewide meetings.

1977: 90
1978: 179

of Commissioner travel in 1977; 47,000 miles of staff and 39,000 miles of Commissioner travel through December 1978. By all standards, the Commision has been highly active and highly visible to both the Indian and non-Indian community. It assists state and federal agencies, saves taxpayers' dollars, and through avoiding litigation, it helps projects meet their deadlines.

**Native American Heritage Commission Public Meetings**

| | |
|---|---|
| o June 21-22, 1977 | Sacramento |
| o July 16, 1977 | Sacramento |
| o October 8-9, 1977 | Morongo Reservation |
| o December 9-10, 1977 | McKinleyville |
| o April 6-8, 1978 | Bishop Reservation |
| o July 8-9, 1978 | Santa Barbara |
| o September 21-22, 1978 | Sacramento |

**Legislative Efforts**

Under the direction of the Commission, the Executive Secretary's office drafted and sponsored heritage legislation on behalf of the statewide Indian community in the 1977-78 legislative session. The NAHC also supported legislation sponsored by others. Several Commissioners, together with the staff, vigorously assisted the sponsors in carrying the bills in the Legislature. The NAHC succeeded in obtaining passage of Senate Concurrent Resolution 87, authored by Senator John Garamendi (D-Stockton), which provides for the leasing of three parcels of state lands to the NAHC for traditional gathering site preserves. SCR 87 replaced SB 1816 which was initially sponsored by the NAHC to achieve legislatively the access agreed to voluntarily by the State Lands Commission. The resolution specifically directs the State Lands Commission to lease at no cost three parcels of land to the NAHC for traditional gathering site preserves. SCR 87 passed the Legislature on August 30, and was Chaptered on September 1 (Resolution Chapter 104, Statutes of 1978).

AB 1977, sponsored by Assemblyman Ken Maddy (R-Fresno) and supported by the Commission, authorized the acquisition of the Ahwanhee Roundhouse and cemetery by the State Department of Parks and Recreation. The bill passed the Legislature on June 1, 1978, and was approved by the Governor on June 16 (Chapter 253, Statutes of 1978). Subsequent to the bill's passage, the Executive Secretary provided technical assistance to the Indian community and to the Department of Parks and Recreation regarding the management plan required by law. AB 2117, sponsored by former Assemblyman Larry Chimbole (D-Landcaster) and also supported

by the Commission, enabled the Department of Parks and Recreation to purchase the Antelope Valley Indian Museum located near Saddleback Butte State Park in Los Angeles. Prior to the bill's passage, Commissioner and museum curator Jane Penn, toured the museum and assisted the Legislative Analyst with his analysis. This is the first of possibly eight regional museums or interpretive centers planned by the Department to emphasize local and regional Indian tribal groups and materials. The bill passed the Legislature on August 7, and was approved by the Governor on August 21 (Chapter 511, Statutes of 1978).

Unfortunately, other important heritage bills failed to get legislative approval. These measures either died in committee or were denied passage. Most tragic was the fate of SB 1817. It passed the Senate, but died on the floor of the Assembly without coming up for vote during the last hours of the session. Authored by Senator Garamendi and eventually co-authored by 30 other legislators, SB 1817 addressed the problems of building codes which require changes that destroy the integrity and violate the sanctity of traditional Indian structures used for religious and ceremonial activities. The bill proposed exempting structures of "special religious significance" from the application of state and local building codes. The bill passed the Senate and all Assembly committee hearings. Assemblyman Larry Kapiloff (D-San Diego), who carried the bill in the Assembly, was unable to bring the bill up for final vote on the Assembly floor during the last hectic hours before adjournment despite repeated attempts. Consequently, the bill died without vote when the 1977-78 Assembly adjourned.

Two other major heritage bills sponsored by the NAHC failed to obtain committee approval and were accordingly refused passage. AB 3007, the Indian Artifacts bill, was authored by Assemblyman Barry Keene (D-Eureka) for the Commission. It would have provided for Indian custody of certain artifacts of contemporary heritage significance to Indians recovered from state lands. Indian custody would have also applied when project mitigation resulted in the recovery of heritage objects from other public lands in accordance with the California Environmental Quality Act (CEQA). The bill did well in the Assembly, but failed by one vote in the Senate Committee on Governmental Organization. The Hot Springs bill, AB 3009, was also authored by Assemblyman Keene for the NAHC and others to protect culturally, historically, and medicinally significant hot springs from geothermal industrial development. This bill died on June 22 in the Assembly Ways and Means Committee.

Also failing to obtain legislative approval was AB 5 (Knox, D-Richmond). This measure would have reinstated a moratorium on the disturbance of all Indian cemeteries less than 200 years old until the Legislature acted upon the recommendations of the NAHC contained in this report. AB 817 (Keene), which attempted to strengthen existing burial and cemetery laws with respect to some Indian burials was refused passage in the Senate on August 31. Finally, AB 1948 (Calvo, D-Mt. View), which would have included records disclosing location of significant archaeological sites from the disclosure provisions of the California Public Records Act, died in committee. Unless these resources are protected from disclosure, they stand the chance of being looted, vandalized, and desecrated.

## Reaching the People

In 1978, the NAHC, together with the Office of the American Indian Coordinator of the Governor's Office of Planning and Research, established a quarterly publication, The Native California Indian Newsletter. The newsletter contains information about state and federal programs and heritage news of interest to the Indian community. It is distributed free of cost. Currently, over 2,000 people and groups are on the mailing list.

Commissioners and staff have attended numerous meetings and conferences on a variety of matters and problems. The NAHC staff, for example, has appeared before the California Arts Commission to report on Commission activities in accordance with Subsection 5097.94(f) of the Public Resources Code. Commissioners and staff testified before the United States Senate Committee on Indian Affairs in support of Senate Joint Resolution 102, the Native American Religious Freedom Resolution of 1978. They have appeared before the Department of the Interior's California Desert Plan Advisory Committee to testify on behalf of the Indian community in the development of the California Desert Management Plan. They have also participated in seminars and have given presentations at the annual meetings of the Society for California Archaeology and the American Anthropological Association. The NAHC staff has testified before hearings sponsored by the National Park Service on the Yosemite National Park Management Plan. The NAHC and staff met jointly with the Native American Advisory Council of the Department of Parks and Recreation on September 21, 1978, to discuss Indian matters touched upon by departmental programs in accordance with Subsection 5097.94(f) of the Public Resources Code.

The NAHC Executive Secretary was appointed in mid-1978 as the Governor's representative to the National Governor's Conference Task Force on American Indian Policy. The Executive Secretary's office prepared a report on heritage rights for the Task Force, which is available upon request. Commissioners Milton Marks and Jane Penn have been named as member and alternate to a special national Native American Religion Advisory Board that will develop recommendations for the President on implementing the Native American Religious Freedom Resolution of 1978. Finally, the NAHC has drafted interim guidelines for protecting Native American heritage resources. These guidelines were released for review in October 1978.

## Special Work in Progress

The NAHC is currently preparing a cultural resource preservation manual that will serve as means of increasing the ability of the Indian and non-Indian community to understand and make use of existing laws and policies which protect culturally sensitive sites. Lack of knowledge concerning existing laws and policies adds to the destruction of sensitive heritage resources.

In addition, the Commission has reviewed the problems inherent in preparing an inventory of or cataloguing places of special religious or social significance to Native Americans in California. Sections 5097.94(a)

and 5097.96 of the Public Resources Code give the Commission the authority and responsibility to identify and catalogue places of special religious or social significance to Native Americans and to inventory Native American sacred places located on public land. The Commission has concluded that the inventory and cataloguing of heritage resources should be delayed at this time because the confidentiality of site information cannot be absolutely guaranteed. Further, insufficient funds have meant that the Commission could not hire the technical personnel necessary to developing and maintaining inventory records.

Legislation which would have assisted in guaranteeing the confidentiality of heritage resources failed to pass the 1977-78 Legislature. Staff analysis of the matter suggests that unless such confidentiality can be guaranteed, the inventory could be used as a method for locating and desecrating sacred places. Further staff analysis reveals that additional problems would be encountered in maintaining and systematizing such an inventory, gathering accurate baseline data, preventing the misuse of records, and in monitoring and updating the inventory. Similar difficulties currently plague the archaeological and historical site inventory maintained by the California Office of Historic Preservation. In conclusion, the Commission strongly believes that a minimal appropriation from the Legislature, with appropriate safeguards, would soon yield substantial returns by avoiding unnecessary litigation and facilitating long-range planning to preserve resources.

## IV. THE ADEQUACY OF PROTECTION ACCORDED CALIFORNIA INDIAN HERITAGE

### Discussion and Recommendations

### State Law

General Issues

In spite of the gains outlined in the previous section of this report, the Commission has found existing state law inadequate for the reasonable protection of California Indian Heritage. Statutes safeguarding religious practices and protecting certain heritage resources (Pub. Res. Code, Section 5097.9) do not apply to privately owned land or to public lands controlled by cities, counties, a city and county, or any land included in a parkland less than 100 acres.

Existing law (Pub. Res. Code, Sections 5097.1-5097.3) providing for the preservation or recovery of historic or prehistoric Indian ruins, burial grounds, or archaeological sites and features by the Department of Parks and Recreation is purely discretionary. Furthermore, it does not apply to privately owned lands or to public lands under the jurisdiction of a city, county, or district or the Department of Forestry as a fire trail. In addition, existing law (Pub. Res. Code, Section 5097.4) has a loophole intended to serve the State's interest which, at the same time, hinders the efforts to preserve and recover cultural items. It specifies that no state construction project can be impaired, impeded, or delayed by any archaeological project conducted by the Department. CEQA requirements have partially superseded these limitations. Moreover, the Department of Parks and Recreation has voluntarily undertaken to return all burials disinterred under its jurisdiction to their Indian descendants for reburial and has made a commitment to promote Indian cultural centers and museums. The law, however, is still fundamentally inadequate. State agencies do not have sufficient authority to determine what shall be done to preserve and manage culturally significant objects and who shall have custody.

In addition, the existing law protecting Indian cultural features and human remains is unsatisfactory (Pub. Res. Code, Section 5097.5; Penal Code, Sections 622½ and 623). It places no limitation on a property owner's destruction of these resources.

> The Commission urges the enactment of a new law which would limit the destruction of sacred sites on private land and land under the control of local governments and allow the discreet and occasional practice of religious and traditional ceremonial activities on these lands. This should be done without excessively expanding the legal authority or responsibilities of the Commission.

The Commission urges reintroduction of heritage legislation considered late in the 1977-78 legislative session that would exempt traditional Indian structures used for religious and ceremonial activities from compliance with building codes which require changes that destroy the cultural integrity of such places. The Commission urges the reintroduction of legislation for the post-recovery Indian custody of sacred and culturally significant Indian artifacts. The Commission urges legislation which will broaden the protection accorded all Indian heritage values in California.

General Cemetery and Burial Law

The reform of burial laws is of paramount importance to the Indian community. California's cemetery and burial laws do not clearly recognize the existence of aboriginal cemeteries and prehistoric burial places; further, they do not adequately protect them (Health and Safety Code, Divisions 7 and 8).

Consultation with the Indian community has already revealed to the Commission many of the details of this problem. In addition, the Commission has received the technical advice of other, non-Indian interests in developing the information needed to carry out the appropriate reforms. Nevertheless, the Commission stresses the need to consult further with the Indian community and others in workshops to fully develop a reform measure acceptable to all. In any event, existing law needs to be amended to provide the best possible protection of Indian cemeteries and burial grounds in their original state, to ensure that disinterment is done only when absolutely necessary, to provide for the reburial of Indian remains in accordance with the religious beliefs of the Indian people involved, to ensure the physical integrity and religious sanctity of reburied remains, and to govern the voluntary donation of prehistoric Indians for scientific study only in a manner acceptable to the appropriate Indian groups.

Traditional Hunting, Gathering, and Fishing Rights

State laws severely restrict traditional hunting, gathering, and fishing rights. Only a small portion of the total native population can legally practice traditional gathering, fishing, and harvesting activities for subsistence, ceremony, and handicraft in California (Govt. Code, Section 186; Fish and Game Code, Section 7155). The State Lands Commission may lease no more than three parcels of state land to the NAHC for traditional gathering site preserves (Resolution Chapter 104, Statutes of 1978). A variety of existing state laws for the preservation of plant, animal, and natural resources fail to acknowledge the importance of such resources to California Indians nor do they provide for specific conditions under which Indians may gather and use these resources in a traditional, inherently non-destructive manner.

Therefore, the Commission urges the broadest possible legislative expansion of existing law relating to traditional California Indian gathering, fishing, and related harvesting activities for subsistence, ceremony, and handicraft. The Commission urges legislation which will protect traditional gathering sites in California in a manner acceptable to all parties. Possible measures could include, in order of preference, acquisition by the local Indian community, acquisiton by the State, or special use guarantees of others controlling public and private land.

The Commission urges legislation which would acknowledge the special importance of and circumstances under which native plants are gathered and used by California Indians for religious and traditional practices; the special conditions under which California Indians may make use of wilderness areas and the potential heritage significance to the Indian of certain free-flowing rivers and streams. The Commission emphasizes that the actual number of physical and natural features of heritage importance to California Indians are few in relation to the total number of such places.

Environmental Quality

The California Environmental Quality Act (CEQA) requires changes which mitigate or avoid the environmental effects of significant projects and undertakings (Pub. Res. Code, Sections 21000, et seq.). This provision currently establishes one of the more important mechanisms by which many Native American heritage resources on both public and private land are identified and protected in California.

The requirements of CEQA are triggered only when it is determined that a proposed project may have a "significant effect upon the environment." The criteria used in determining "significant effect" include the elimination of "important examples of the major periods of California history or prehistory" as the only heritage category for agencies to consider in assessing the environmental effects of projects (State EIR Guidelines, Calif. Admin. Code, Title 14, Division 6, Chapter 3). The guidelines fail to include Native American heritage, Indian cemeteries and cultural remains as a specific topic of environmental concern. The guidelines additionally fail to list an agency of special expertise in that subject. The guidelines ignore the fact that the excavation of archaeological sites over 200 years old has a significant effect on the environment from the perspective of the Indian To resolve these problems the Commission has begun working with the Resources Agency and the Office of Planning and Research in revising the EIR guidelines.

**Local Ordinances**

The Commission also lacks the staff and budgetary resources needed to conduct a thorough and exhaustive inventory of the heritage related

ordinances and procedures of every individual local government and special district or of their administrative units and agencies.

The Commission observes that for the most part, however, local heritage ordinances appear to be awkward regulatory tools and, at worst, legal anachronisms. They often further complicate local government with yet another licensing body. Certifying the "qualifications" of certain archaeological practitioners by local licensing authorities seems to do little to improve the standards of research or to promote Indian understanding of their forebearers. Certification apparently does much toward increasing the profit of licensed practitioners in contractual relationships and in excluding potential competitors in what has become in many places a very lucrative enterprise. Such ordinances are redundant insofar as environmental quality law and policy safeguard most cultural values and, with minor improvements and increased monitoring at the local level, could safeguard almost all such values. They are additionally redundant inasmuch as the requirements of State Planning and Zoning Law provides yet another, more uniform preventative mechanism by which cultural values may be protected at the local level.

> The Commission stresses the need to consider the means by which General Plan requirements of state law can be used in further protecting sacred places and related heritage resources at the local level. The Commission further urges the expanded use of environmental law and policy and post-authorization project monitoring and surveillance to promote heritage preservation at the local level.

**Federal Law and Policy**

Approximately 45 million of California's 100 million acres are administered by the federal government. The Commission reports that it has also found existing federal law and policy inadequate for the protection of California Indian heritage.

While existing federal law prohibits the unauthorized destruction of any prehistoric ruin, Indian cemetery, or related "object of antiquity" situated on land owned or controlled by the United States, this law is rarely enforced and prosecutions are occasionally ineptly handled (American Antiquities Act of 1906, Public Law 59-209; 16 U.S.C. 431-433). Federal law is also flawed in that the conditions under which permits may be issued for archaeological investigation do not allow for Indian custody of the recovered artifacts and human remains of heritage significance to the particular Indian group involved.

The Commission has found that several federal statutory provisions which exist to preserve and protect culturally significant sites and places, regardless of ownership, have not been effectively employed to safeguard Native American sacred and related heritage places in California (American Antiquities Act; the Historic Sites Act of 1935, Public Law 74-292; 49 Statutes 666; 16 U.S.C. 461-467; the National Trust for Historic Preservation Act of 1949, Public Law 81-408; 63 Statutes 927; 16 U.S.C. 468(d)).

The Commission has found a number of drawbacks in existing and proposed federal regulations (primarily 36 C.F.R) which govern the inventory and conservation of cultural resources on lands controlled by federal agencies and which are affected by federal or federally assisted projects. These regulations require steps to be taken to determine the eligibility of cultural resources for inclusion on the National Register of Historic Places. They also detail what steps will be taken to avoid harming such places. First of all, not all heritage categories important to California Indians (including cultural settings and some kinds of sacred places) are eligible for inclusion on the National Register under existing criteria and are not, therefore, accorded such procedural protection. The general effectiveness of the procedures are undermined, moreover, by federal noncompliance, either as a result of a combination of ignorance, budgetary handicaps, or willful circumvention or as a result of the budgetary inability of the federal and state enforcement agencies jointly to maintain an adequate review and monitoring staff to ensure full compliance. In addition, the procedural regulations are themselves in danger of being significantly weakened by federal authorities.

The Commission has found that some federal agencies are reluctant to cooperate fully with the local California Indian community, the Commission, and the California State Office of Historic Preservation in safeguarding Indian heritage concerns. The Commission has also found at least one federal heritage management agency unsympathetic to Indian efforts to assert their heritage rights. This agency is committed to interpreting and administering federal archaeological salvage laws in such a way that Indian heritage rights are violated. The Commission has found that federal environmental law, policy, and procedures are often not used as effectively as possible to safeguard Indian heritage. It observes that this neglect is often due to deliberate agency circumvention of environmental regulations.

The Commission urges increased state activity in a number of existing heritage and environmental programs which provide for intergovernmental cooperation in the preservation of California heritage resources. The Commission urges increased state efforts to assist the federal government determine policy and procedural changes necessary to preserve and protect Native American cultural and religious rights on land administered by federal agencies in California in accordance with the Native American Religious Freedom Resolution of 1978 (Public Law 95-341; 92 Statutes 469; 42 U.S.C. 1976). The Commission urges state efforts to advise the federal government of the need to safeguard Native American heritage in California through the application and improvement of existing statutory and procedural powers. The Commission finally urges increased state and state-assisted community surveillance of heritage related activities on federal land.

## IV. RECOMMENDATIONS

In fulfillment of the requirements of Section 5097.96 of the Public Resources Code and in accordance with Sections 5097.94(b), 5097.94(c), 5097.94(f), and 5097.94(i) of the same Code,

The California Native American Heritage Commission recommends that the California Legislature broaden the statutory protection accorded Native American sacred places specifically and California Indian heritage generally. The Commission further recommends that the Legislature empower the executive branch of state government with the resources and authority to undertake the correction of deficiencies and problems identified in this report in the manner urged.

The Commission further recommends that the specific mandate of the executive branch of state government to protect California Native American heritage be improved in such a way as to permit the fulfillment of existing duties and responsibilities and that the mandate of the executive branch be expanded to enable it to carry out new duties and responsibilities in the most efficient manner possible. The Commission suggests that any existing and additional regulatory burden be shared and the growth of government be minimized in at least two ways. The first is through granting the appropriate state heritage regulatory and enforcement authorities the power to delegate to local governments and to responsible and appropriate public interest and community service organizations many monitoring, management, and review functions. The second is through granting the heritage authorities the capacity to assist those so delegated to seek federal, private, or other financial program assistance.